UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

MATSON TERMINALS, INC.

Employer

and

Case 20-RC-121101

HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996

Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

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The Employer would then need to demonstrate a clear error of fact that caused prejudice. But here, as the Acting Regional Director found, the senior superintendents and superintendents do not "assign" employees with independent judgment inasmuch as the place, time, and overall duties of the work performed by their putative subordinates is dictated by extremely detailed flow plans and other schedules, and by the collective-bargaining agreement covering longshoremen. The Employer did not show clear factual error in the Acting Regional Director's conclusion that deviations from these plans and schedules occur only in relatively minor or routine circumstances, such as when a damaged container must be removed, and that nearly every type of deviation requires higher level review and approval. Further, with respect to "responsible" direction, there is insufficient record evidence that the senior superintendents and superintendents have authority to take corrective action against a putative subordinate for failing to follow a

¹ Member Johnson joins his colleagues in denying review in this matter. Although this case is a closer call than most, the Employer here has failed to justify a Board review of the Acting Regional Director's determination that the Container Vessel Stevedoring (CVS) senior superintendents and CVS superintendents lack the requisite authority to be classified as statutory supervisors. The Employer failed to carry its burden under Section 102.67(c) of the Board's Rules and Regulations to show that the Acting Regional Director's decision "depart[s] from officially reported Board precedent," or his decision "on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party." Id. Initially, the Employer has not demonstrated significant departure from extant Board precedent on supervisory issues. Here, the Regional Director applied the governing case law on supervisory status, including the definitions of "assign" and "responsibly to direct" under Section 2(11) of the Act. See generally *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006).

We also deny the Employer's request to stay the election.

MARK GASTON PEARCE, CHAIRMAN

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

Dated, Washington, D.C., June 2, 2014

directive, or that the senior superintendents and superintendents face the prospect of adverse consequences based on the failure of subordinates to follow directives. And, as noted above, given the limited evidence of deviations from the predetermined plans and schedules, there was no clear error in finding a lack of independent judgment. For those reasons, Member Johnson finds none of the Acting Regional Director's factual findings, including the abovementioned examples, are "clearly erroneous," as they are all supported by substantial record evidence.